

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

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BABY DOE, A CITIZEN OF AFGHANISTAN :
CURRENTLY RESIDING IN NORTH : CIVIL ACTION NO. 3:22-CV-49
CAROLINA, BY AND THROUGH NEXT :
FRIENDS, JOHN AND JANE DOE; AND JOHN :
AND JANE DOE, CITIZENS OF AFGHANISTAN:
AND LEGAL GUARDIANS OF BABY DOE, :
:
Plaintiffs, :
:
v. :
:
JOSHUA MAST, STEPHANIE MAST, RICHARD :
MAST, KIMBERLEY MOTLEY, AND AHMAD :
OSMANI, :
:
Defendants, :
:
and :
:
UNITED STATES SECRETARY OF STATE :
ANTONY BLINKEN AND UNITED STATES :
SECRETARY OF DEFENSE GENERAL :
LLOYD AUSTIN, :
:
Nominal Defendants. :
----- X

**PLAINTIFFS' MOTION, AND MEMORANDUM OF LAW IN SUPPORT OF MOTION,
TO SEAL EXHIBIT 1 OF PLAINTIFFS' OPPOSITION
TO DEFENDANT JOSHUA & STEPHANIE MASTS' MOTION TO COMPEL**

Plaintiffs, by counsel, respectfully move for leave to file under seal Exhibit 1 of their Opposition to Defendants Joshua and Stephanie Masts' Motion to Compel ("Opposition"), pursuant to Local Civil Rule 9 and this Court's Protective Order (ECF No. 26). In support thereof, Plaintiffs state as follows:

Exhibit 1 of the Opposition is the amicus brief filed by the United States in the Court of Appeals of Virginia in the case of *A.A. and F.A. v. J.M. and S.M.*, Case Nos. 1855-22-2, 0940-23-2, 0953-23-2, and 0876-23-2. The United States filed the brief under seal. In addition, the Court of Appeals of Virginia has entered numerous orders requiring that briefs in the matter be filed under seal, including the February 16, 2023 Order attached as Exhibit A hereto. In that Order, the Court of Appeals of Virginia recognizes that the parties (who are Plaintiffs in the matter before this Court) “face a risk of harm if their identities become public,” *see Exhibit A at 2*, a ruling which is consistent with the Protective Order entered by this Court (ECF No. 26) allowing Plaintiffs to proceed under pseudonyms, given the concern for their safety and that of other innocent non-parties, such as their family members.

Under the common law right of access to judicial records, documents should be sealed when a party’s interest in keeping the information contained therein confidential outweighs the presumed right of public access. *See, e.g. Stone v. Univ. of Maryland Med. Sys. Corp.*, 855 F.2d 178 (4th Cir. 1988); *Ashcroft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000). “Courts have recognized that an interest in protecting the physical and psychological well-being of individuals related to the litigation, including family members and particularly minors, may justify restricting access” to court documents. *United States v. Harris*, 890 F.3d 480, 492 (4th Cir. 2018); *see also United States v. Doe*, 962 F.3d 139, 147 (4th Cir. 2020).

In this instance, the threats to the safety of the Plaintiffs and other innocent non-parties are very real, and have been recognized by this Court’s Protective Order (ECF No. 26) and by the Court of Appeals of Virginia.

Plaintiffs have publicly filed a version of their Opposition. Thus, the public is not wholly deprived of an understanding of the general underlying factual basis for the request. The relief

Plaintiffs seek in this motion is narrowly tailored to the circumstances, and aims to seal only what is absolutely necessary to safeguard the safety of persons related to the litigation. Defendants are not prejudiced as they are aware of Plaintiffs' identities.

Accordingly, Plaintiffs request that Exhibit 1 of their Opposition be filed under seal, as the risks attendant to public disclosure of these documents is not likely to dissipate over time.

A proposed Order is attached as Exhibit A to this Motion.

Dated: October 18, 2023

Respectfully submitted,

/s/ Maya Eckstein

Maya M. Eckstein (VSB No. 41413)
Lewis F. Powell III (VSB No. 18266)
Kevin S. Elliker (VSB No. 87498)
HUNTON ANDREWS KURTH LLP
951 E Byrd St
Richmond, VA 23219
Telephone: (804) 788-8200
Fax: (804) 788-8218
Email: meckstein@HuntonAK.com
Email: lpowell@HuntonAK.com
Email: kelliker@HuntonAK.com

Jeremy C. King (*admitted pro hac vice*)
HUNTON ANDREWS KURTH LLP
200 Park Avenue
New York, NY 10166
Telephone: (212) 309-1000
Fax: (212) 309-1100
Email: jking@HuntonAK.com

Sehla Ashai (*admitted pro hac vice*)
ELBIALLY LAW, PLLC
704 East 15th Street
Suite 204
Plano, TX 75074
Telephone: (312) 659-0154
Email: ashai@elbiallylaw.com

Blair Connelly (*admitted pro hac vice*)
Zachary L. Rowen (*admitted pro hac vice*)

LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, New York 10020
Telephone: (212) 906-1200
Facsimile: (212) 751-4864
Email: Blair.Connelly@lw.com
Email: Zachary.Rowen@lw.com

Ehson Kashfipour (*admitted pro hac vice*)
Damon R. Porter (*admitted pro hac vice*)
LATHAM & WATKINS LLP
555 Eleventh Street, N.W. Suite 1000
Washington, D.C. 20004
Telephone: (202) 637-2200
Facsimile: (202) 637-2201
Email: Ehson.Kashfipour@lw.com
Email: Damon.Porter@lw.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of October 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing to all CM/ECF participants.

By: /s/ Maya M. Eckstein
Maya M. Eckstein (VSB # 41413)
Hunton Andrews Kurth LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
meckstein@HuntonAK.com

Counsel for Plaintiffs